

Sensitive Areas Review

21



A DDES Customer Information Bulletin



King County Department of Development and Environmental Services
900 Oakesdale Avenue Southwest Renton, Washington 98055-1219

<http://www.metrokc.gov/ddes/>

Frequently Asked Questions

King County DDES has created customer information bulletins to inform the general public about the effect of codes and regulations on their projects. These bulletins are not intended to be complete statements of all laws and rules and should not be used as substitutes for them. If conflicts and questions arise, current codes and regulations are final authority. Because the codes and regulations may be revised or amended at any time, consult King County staff to be sure you understand all requirements before beginning work. It is the applicant's responsibility to ensure that the project meets all requirements of applicable codes and regulations.

1. What is the purpose of the sensitive areas requirements?

The sensitive areas requirements implement the goals and policies of the Washington State Environmental Policy Act, RCW 43.21C, and the King County Comprehensive Plan which call for protection of the natural environment and the public health and safety. During the permit process, building and development projects are screened to ensure that they comply with the requirements originally contained in the Sensitive Areas Ordinance (SAO). In 1979 the SAO was first passed by the King County Council to identify and protect environmentally sensitive areas and to protect the public from injury and property damage. The SAO was amended to become King County Code (K.C.C.) chapter 21A.24 of the Zoning Code (K.C.C. Title 21A). Most sensitive areas requirements are located in chapter 21A.24 however, there are other codes which also apply to or affect sensitive areas such as the Clearing and Grading Code (K.C.C. chapter 16.82) and the Shoreline Code (K.C.C. Title 25).

2. What is a sensitive area?

Sensitive areas are lands which are subject to natural hazards or which support certain unique, fragile or valuable environmental features such as wildlife and its habitat. Areas designated by the County as sensitive include lands at high risk for erosion, landslides, earthquakes or flooding; those underlain by coal mines; or wetlands or lands adjoining streams, rivers and other water bodies. The requirements protect both sensitive areas and their buffers. Buffers are parts of property located next to sensitive areas designated to protect those areas and their habitats from adjacent development and land use impacts.

Any land designated as a sensitive area must receive a special review by the County before a development permit may be issued. This is called a **Sensitive Areas Review**. The review is just one step of the process of permit application, screening and review. Ideally, you should understand the provisions before purchasing property. If you have already purchased property, you should have a clear understanding of the provisions before proceeding with a permit application. If you avoid addressing the issue of sensitive areas, you may encounter problems such as Stop Work orders, delays, or costly work procedures to redesign your project.

Frequently Asked Questions

NOTE: It is generally illegal to perform clearing, grading, building or other development work in a sensitive area or its buffer before obtaining a permit. It is the responsibility of the property owner to become informed about sensitive areas and to include sensitive areas information when applying for a permit. Before you begin any of the activities listed in this bulletin, contact DDES staff at 206-296-6759 to determine if a permit is required. (When you call, your request for information will be recorded, and you will receive a response within 48 hours.)

The following are brief descriptions of the sensitive areas regulated by King County. Complete definitions are given in K.C.C. chapter 21A.06 (Zoning Code). Individual fact sheets on specific sensitive areas (such as wetlands) are available from the Land Use Services Division (LUSD) at DDES (telephone 206-296-6640).

◆ **Wetlands.** Areas that are saturated with water to the extent that they support wetland plants (such as cattails and sedges) and that also have organic or hydric mineral soils. In undisturbed wetlands, all three of these criteria (plants, soils, hydrology) must be present; in disturbed settings, only one of these criteria must be present. Three classes of wetlands are identified by the County, each requiring buffers. Wetlands are protected because clearing, building or filling in or near them can increase flood hazards and can cause water quality and/or fish and wildlife habitat deterioration.

◆ **Streams.** Areas where surface water flows enough to produce a defined channel or bed. Three classes of streams are identified by the County, each requiring buffers. Streams are protected because clearing or building near them can increase flood damage and can cause water quality and/or fish and wildlife habitat deterioration.

◆ **Flood hazard areas.** Areas that are covered with water by a base flood, sometimes called a “100-year flood.” Building or filling in the floodplain can result in flood damage to the development or other properties.

◆ **Steep slope hazard areas.** Any ground steeper than 40% or more with a vertical rise of at least 10 feet. A 40% slope is equivalent to a 10-foot vertical rise in 25 feet of horizontal distance and is approximately equal to a slope of 22° from horizontal. Steep slopes have an increased risk of erosion or slope failure, causing damage to structures above, on or below the slope.

◆ **Erosion hazard areas.** Areas containing silt or clay-rich soils on slopes 15% or steeper. These areas can produce large amounts of silt-laden runoff when vegetation is removed.

◆ **Landslide hazard areas.** Areas subject to severe risks of landslides. These can include areas of historic or prehistoric movement, areas subject to debris flows or snow avalanches, areas subject to rapid streambank or wave erosion, and areas with a combination of seeps, 15% slopes and interbedded silts or clays.

◆ **Coal mine hazard areas.** Areas underlain by or affected by abandoned coal mine workings.

◆ **Seismic hazard areas.** Areas subject to severe risk of earthquake damage as a result of earthquake-induced settlement or soil liquefaction.

◆ **Volcanic hazard areas.** Areas that are subject to mud flows or related flooding from volcanic activity on Mt. Rainier. **Note:** King County is still in the process of identifying these hazard areas, and information is

Frequently Asked Questions

incomplete concerning potential impact from mudflows. These areas will be regulated once the County has completed the required modeling and mapping.

3. How may I find out if my property is designated sensitive?

The Sensitive Areas Map Folio displays known sensitive areas (other than steep slopes). Wetlands are more completely described in the King County Wetlands Inventory. In addition, many flood hazard areas are mapped by the Federal Insurance Administration in the Flood Insurance Study for King County. An area is designated as sensitive only if it meets one of the definitions.

NOTE: The Sensitive Areas Map Folio is best thought of as a guide which assists readers in understanding the subject of sensitive areas. The mapping is general and shows areas to check for landslide, erosion, seismic or coal mine hazards or for the presence of wetlands or streams. The actual presence or absence of the sensitive areas features, as defined in the Sensitive Areas Code, determine the permit requirements, regardless of what is contained in maps and other documents. The county does not have maps of all sensitive areas, and it is the responsibility of the property owner to include sensitive areas information when applying for a permit.

The Sensitive Areas Map Folio is available for examination at DDES and in reference sections of most King County libraries.

King County and DDES also have collected, from a variety of sources, information that can be related to property located in both the incorporated and unincorporated areas of King County. Using licensed software, this information is available on the DDES web site (<http://www.metrokc.gov/ddes/>) created by the Department's GIS (Geographic Information Systems) section. The County has assembled this information in a GIS enabling access to, and display of, such information in a map format as well as tabular and text formats. With this application, customers may access a variety of parcel-specific information.

You may also discuss the process of finding out whether your property has a sensitive area on it by contacting the Zoning Counter staff at DDES. Your options are as follows:

1. You may briefly discuss your project with Zoning Counter staff on the phone (206-296-6655) or in-person at the DDES offices, review King County Code chapter 21A.24, the Sensitive Areas Map Folio, and the DDES Property Research web site at <http://www.metrokc.gov/ddes/property.htm>.
2. You may set up a pre-application inquiry for sensitive areas (see question 4).
3. You may complete a formal building or development permit application, which may be followed by a Sensitive Areas Review (see question 4).
4. You may hire a consultant to investigate your property. *Selecting a Geotechnical Consultant Fact Sheet* and *Selecting a Wetlands/Stream Consultant Fact Sheet*, both available at DDES, may be helpful.

If you come to the Zoning Counter at DDES, staff will briefly discuss sensitive areas with you. You may then choose to arrange for a pre-application inquiry to proceed with a formal application. DDES staff will ask you questions such as the following:

Frequently Asked Questions

- ◆ Do you have a stream, wetland or steep slope on or adjacent to your property? (Buffers may extend across property lines, which would result in some part of your property being designated as a sensitive area.)
- ◆ Are there areas on your property where coal mining activities were previously conducted, or areas with easily eroded soils?
- ◆ What other special conditions exist? An example of a special condition is that a hillside with a slope of less than 40% may qualify as a sensitive area because it is in a landslide hazard area.

Fees: You will not be charged a fee for brief discussions of your project with DDES staff, as described in the first option, above. If you decide to set up a pre-application inquiry, you will be required to pay a deposit to begin the review and an additional hourly fee if the review takes more than two hours. If you complete a formal permit application, you will be charged fees at various stages of the project. Contact 206-296-6655 for more information.

4. How are sensitive areas identified and protected?

The sensitive areas code requires protective buffers to be designated around some sensitive areas and, in some cases, special studies to be conducted to evaluate risks to proposed projects or to the environment. The sensitive areas review process is explained below and a diagram of the review process is shown on page 5.

◆ Pre-application Review

The Site Development Services section at DDES provides a **pre-application inquiry service** to inform prospective applicants about the additional information or special studies which would be required for the development of a given piece of property. This review is **not** a comprehensive site evaluation for all applicable codes, nor does the reviewer provide specific development recommendations. After visiting the site and studying reports or other information, the reviewer will determine if specific conditions will apply to your proposed project or if further information or specific studies will be required. DDES will notify you, by letter, of the results of the reviews.

A pre-application review can save you additional expense by informing you about potential site constraints affecting your project, in advance of preparing detailed construction plans or applying for a building permit.

◆ Application Review

Another option for identifying sensitive areas is to **proceed with a formal application**. DDES will review your proposed project to determine its relationship to the sensitive area when you apply for a building or grading permit, or for a short subdivision, subdivision, rezone, conditional use, variance, special use or shoreline approval. You will be asked to give topographic, hydrologic, and other information about your property. If the information suggests that your property is on or adjacent to a sensitive area, the County will require a Sensitive Areas Review and may require a special study.

If a **special study** is required, it will need to be reviewed and approved before the application may be sent to the next stage of the permit process. Once Site Development Services staff have received the special study, they will evaluate it and make suggestions for project compliance with County codes and policies. Based on these evaluations, a decision will be made to approve the project or add **mitigating conditions**, to the permit.

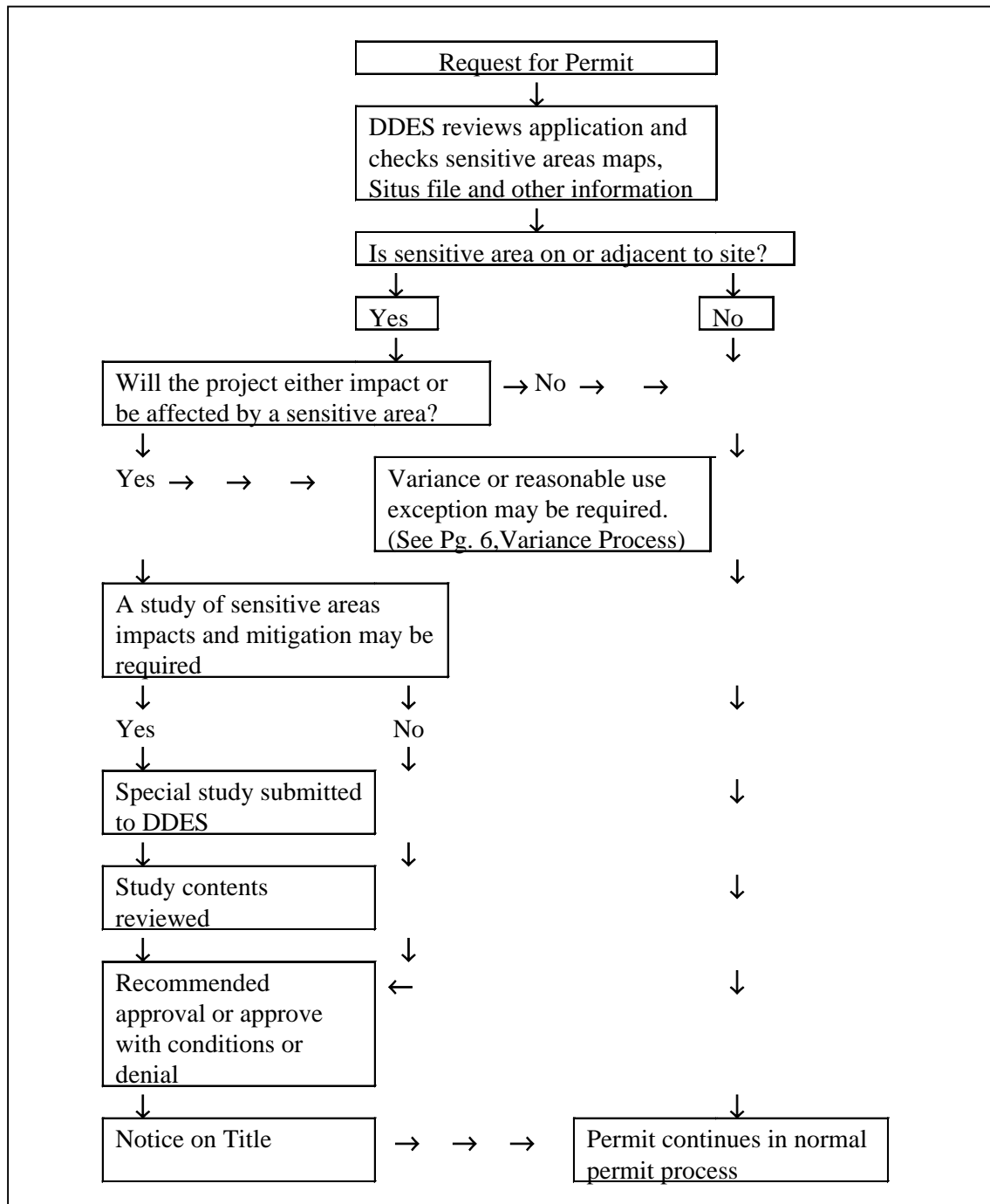
Sensitive Areas Review

21

Frequently Asked Questions

Mitigation means any of a number of measures taken to avoid impact to the sensitive area and/or buffer or other actions that minimize, rectify, reduce or compensate for the impact. An example of mitigation is the requirement to add buffers and/or engineering design modification for coal mine hazard areas.

The Sensitive Areas Review Process



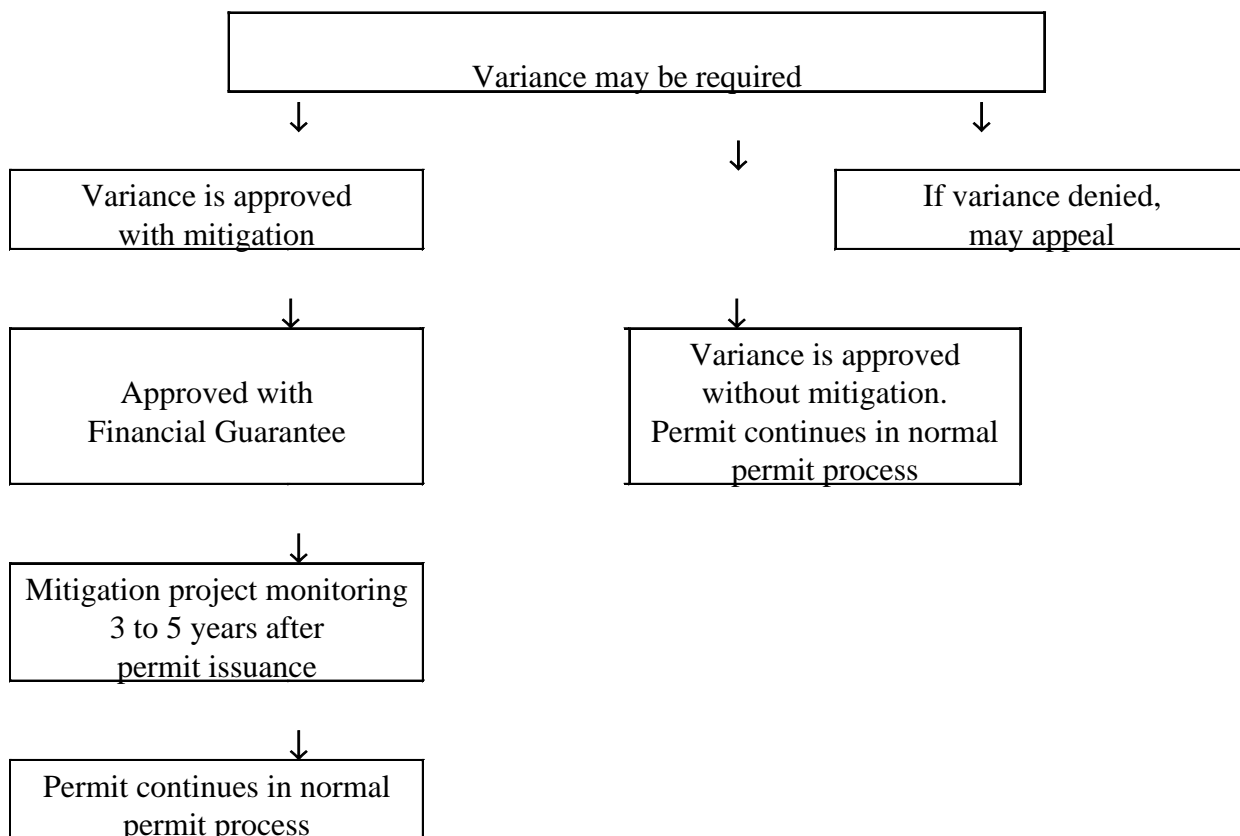
Frequently Asked Questions

After going through this review, the project is then sent to the next stage of the permit process.

If a sensitive area exists on the site, you will be required to file a **Notice on Title** with the King County Records and Elections Division. This public notice states that a sensitive area or buffer is present, that the sensitive areas code applies to the property, and that the provisions may limit development actions in the sensitive area(s) or buffer(s). (The notice contains a site plan on which sensitive areas and their buffers have been drawn.) Proof that the notice has been filed must be submitted before King County may approve any development proposal for the site.

If your property lacks the space for the buffers required by the sensitive areas code, you will need to determine if you are eligible to receive a **variance approval** or a **reasonable use exception** from King County Code, before getting your permit. If this is the case, contact DDES staff at 206-296-6655 for more information. (See question 11 for definitions of these terms.)

The Variance Process



Frequently Asked Questions

5. What will be the focus of DDES staff in reviewing development projects in a sensitive area?

DDES staff will focus on protecting sensitive areas and their required buffers, as provided by the sensitive areas code (K.C.C. 21A.24), or on eliminating or mitigating potential problems associated with development in hazard areas.

6. How accurate are the sensitive areas maps?

The maps are compilations of other mapped conditions, such as soil type, slope, geologic features and water bodies. Field examinations were also made by qualified experts during the map preparation stage to verify some features. The maps show a high probability of sensitivity to development. However, not all sensitive areas have been mapped by the County. In addition, the designation of sensitive areas is governed by K.C.C. chapter 21A.24, which defines sensitive areas based on the actual presence or absence of certain features.

The Department will examine evidence submitted by the applicant and make field examinations in most cases. The burden of supplying evidence of any error falls on the land owner or developer at the time a permit is submitted.

7. How do the Sensitive Areas Review Process and the State Environmental Policy Act (SEPA) Process Interact?

SEPA and the Sensitive Areas Code are separate pieces of legislation with different requirements and procedures. King County has the authority to deny or condition permits under SEPA as well as under K.C.C. chapter 21A.24. Should there be any conflict about the requirements and procedures of each piece of legislation, the provisions that provide more protection to environmentally sensitive areas would apply to your property.

For information about SEPA, see Customer Information Bulletin #26, *The SEPA Process*, or call the Current Planning section supervisor at DDES (206-296-7118).

8. How may I avoid doing a special study?

The best way to avoid doing a special study is to find out where sensitive areas exist and to plan your project so as not to disturb sensitive areas and to include buffers as required by the sensitive areas code. However, doing a special study can sometimes streamline the review process and save you additional expenses involved in redesigning your project. Before making plans, check with DDES staff at 206-296-6655.

9. When are permits required for clearing or grading?

Clearing and grading permits are required for **any alteration** to a sensitive area or its buffer. An *alteration*, as defined in K.C.C. 21A.24.190, means “any human-induced activity which results or is likely to result in an impact upon the existing condition of a sensitive area.” Based on this definition, alterations range from disturbing the soil or removing vegetation to pruning, using pesticides or herbicides, grazing animals, among other action. Mitigation may be required. Alterations do not include “passive” recreational activities such as walking or fishing. An extensive list is provided in K.C.C. 21A.24.190.

Note: Grading 100 cubic yards or more outside sensitive areas also requires a permit. Contact Site Development Services staff at 206-296-6759.

Frequently Asked Questions

10. Are there any exemptions to the Sensitive Areas Review Process?

Exemptions are provided from the sensitive areas code, but only in some cases. See K.C.C. 21A.24.050 for specific language about complete exemptions, and K.C.C. 21A.24.060 for partial exemptions. To verify that an exemption applies to your site, contact Zoning Counter staff at 206-296-6655. The following is **not complete** but includes representative examples of exempt activities:

- ◆ Emergencies that threaten the public health, safety and welfare, subject to notification. Mitigation may be required.
- ◆ Remodeled or reconstruction of single-family (detached) residences in existence before November 27, 1990 if the modification does not further intrude on sensitive areas. For remodeling of structures other than single-family (detached) residences in existence before November 27, 1990, see K.C.C. 21A.24.060.

Note: This requirement pertains to structures that do not meet the setback or buffer requirements for wetlands, streams or steep slope areas. These structures may be remodeled or reconstructed provided that the new construction does not further intrude into a stream, wetland, steep slope or associated buffers and meets the restrictions of the flood hazard areas for reconstruction. The footprint of the structure lying within the sensitive area must not be increased by more than 1,000 square feet, and no portion of the structure may be located closer to the stream, wetland or steep slope than the existing structure. A permit is required for such remodeling or reconstruction.

- ◆ Many on-going agricultural activities in existence before November 27, 1990, and performed at least once every five years thereafter (for example, maintenance of existing ponds for livestock; mowing; or plowing, planting and harvesting for pasture, seed, or food crops).

Note: Livestock grazing in existence before November 27, 1990 is exempt from the sensitive areas code but must comply with the livestock provisions in K.C.C. 21A.24.320 and K.C.C. 21A.24.360 and any animal density regulations established by law.

- ◆ Many activities by public utilities (for example, routine maintenance and repair, relocating of facilities in certain circumstances, or installation of facilities in improved county rights-of-way).

11. Are there variances, exceptions or waivers?

The sensitive areas code includes processes for variances, reasonable use exceptions and public agency and utility exceptions, in certain circumstances. For assistance with concerns of this type, or the application process in general, contact Zoning Counter staff at 206-296-6655.

A **variance** is an adjustment in the application of the regulations of a zoning ordinance to a piece of property because of special circumstances found to exist on the land. The variance is granted when the property would be deprived of privileges commonly enjoyed by other properties in the vicinity and under an identical zone. Variances may only be granted to reduce buffer widths and they must be the minimum necessary resulting in the least affect possible.

Sensitive Areas Review

Frequently Asked Questions

21

A **reasonable use exception** is a type of waiver granted when application of the sensitive areas code “would deny all reasonable use of the property,” and “there is no other reasonable use with less impact on the sensitive area.” In some cases, development is allowed which is “consistent with the general purposes of this ordinance and the public interest.” (See K.C.C. 21A.24.070.)

In some cases, an alternative is provided to the variance and exception processes for single family residences on existing legal urban lots. When minor development is proposed, the Director of DDES may modify or waive some or all sensitive area requirements pertaining to Class 3 Wetlands, Class 3 Streams, and their required buffers and setbacks. This waiver is granted only when minimal impact to sensitive areas is ensured. (See K.C.C. 21A.24.075.)

12. What is the Sensitive Areas Affidavit?

If sensitive areas are present on the proposed development site, the applicant is required to disclose their presence as well as any mapped or identifiable sensitive areas within 100 feet of the site. The applicant must also submit an affidavit stating that sensitive areas on the site have not been altered and that the applicants have not been found in violation of sensitive area regulations for any property in King County. If any violations have occurred, they must have been corrected. (See K.C.C. 21A.24.090.)

13. May I appeal?

When conditions are placed on your project due to sensitive areas, you may file a written appeal according to, and as part of, the appeal procedure for the permit or approval involved (see K.C.C. 21A.24.030). Residential and commercial building permits are not appealable unless subject to SEPA. If your project requires more than one appeal for which hearings are required, every attempt will be made to consolidate the hearings into a single proceeding. The appeal must be made to the county’s Hearing Examiner and is then filed with the Land Use Services Division at DDES. There is a fee involved. Call 206-296-6655 for more information.

14. Are there any fees for Sensitive Areas Review?

Yes. Fees are required for sensitive areas review, in addition to fees for preapplication and other stages of the development permit process. For additional information and for a **current fee schedule**, contact Zoning Counter staff at 206-296-6655. Note that fees are not required for general information.

Performance and maintenance/monitoring financial guarantees may be required for restoration and mitigation activities. See Customer Information Bulletin #40, *Financial Guarantees*.

15. What are the penalties for sensitive areas code violations? Are financial guarantees required?

Violations of the sensitive areas code are subject to civil penalties. In addition, required permits and approvals may be subject to revocation, suspension, or refusal. Violations are required to be corrected at the expense of the responsible party.

16. Are benefits available to property owners to protect sensitive areas?

Sensitive areas provisions can provide benefits to property owners who protect sensitive areas, such as wetlands or streams, or who mitigate impacts to geologic or other hazard areas. In addition to increased safety, the

Sensitive Areas Review

Frequently Asked Questions

21

following benefits are provided:

- ◆ **Density Credits:** Density credits provide compensation to owners for parts of their property that cannot be developed because they contain sensitive areas and/or their buffers. Density credits may be available for required buffers and for all sensitive areas except submerged lands. Where density credits are allowed, and if zoning regulations allow, residential development can be concentrated on the portions of the property that are not restricted by buffers, setbacks or the sensitive area feature. The property may still be subject to other zoning and development restrictions.
- ◆ **Current Use Taxation:** Property owners will be taxed according to the actual use of their property. This may mean a reduction in property tax for parcels with undevelopable sensitive areas or buffers if an additional public benefit, such as an open space resource, is provided. Land approved for open space taxation is subject to certain use limitations. (See the Current Use Assessment/Open Space Fact Sheet.) Contact the King County Department of Assessments (206-296-7300) and the King County Office of Open Space (206-296-7800) for information on the Public Benefit Rating System (PBRS) and property tax adjustments.

17. Where may I get more information?

Most of the restrictions described in this bulletin are from K.C.C. chapter 21A.24 (Zoning Code) and from K.C.C. chapter 16.82 (Clearing and Grading Code). If you have additional questions about sensitive areas, please contact DDES staff.

Other bulletins and telephone numbers that may be helpful

Bulletin 1	Building and Development Permit Telephone Numbers
Bulletin 10	Residential Building on or Near Waterfront
Bulletin 17A	Zoning Code: Overview and Summary
Bulletin 25	Short Subdivisions
Bulletin 28	Clearing and Grading Permits
Bulletin 38	Flood Insurance and FEMA
206-296-6600	DDES Permit Center
206-296-6655	DDES Zoning and Land Use Information
206-296-6640	DDES Land Use Services Division/Subdivision and Short Subdivisions
206-296-6759	Clearing, grading and technical sensitive area questions
206-296-6680	Code Violations

Note: If you get a recorded message when you call any of these numbers, please do not hang up. When you leave a message, please be as specific as possible in requesting information. DDES staff will return your call



King County complies with the Americans with Disabilities Act (ADA). If you require an accommodation to attend a meeting (two weeks notice) or require this information in Braille, audiocassette, or large print, please call 206-296-6693 or TDD 206-296-7217.